

## Public Notice – Environmental Regulation

**Notice of intended action:** The State Water Control Board intends to consider drafting a proposal for the adoption of a new General VPDES Permit regulation on Pesticides Discharges. A regulation is a general rule governing people's rights or conduct that is upheld by a state agency.

**Regulation name:** General VPDES Permit for Pesticides Discharges

**Purpose of notice:** The board is seeking comments through the Department of Environmental Quality on the intended regulatory action, including but not limited to 1) ideas to assist the board in the development of a proposal 2) the costs and benefits of the alternatives stated in the agency background document or other alternatives 3) potential impacts of the regulation and 4) effects of the regulation on farm or forest land preservation. The board is also seeking information on impacts on small businesses.

**Public comment period:** May 10, 2010 to June 18, 2010

### Public meeting:

A public meeting will be held at DEQ's Piedmont Regional Office Training Room at 4949-A Cox Road in Glen Allen, Virginia on June 9, 2010 at 2:00 PM. Unlike a public hearing, which is intended only to receive testimony, this meeting is being held to discuss and exchange ideas and information relative to the development of a proposal.

**Public comment stage:** Notice of Intended Regulatory Action

### Subject matter and intent of proposal:

The purpose of the proposed action is to develop and issue a VPDES general permit for discharges from pesticides applied directly to surface waters to control pests, and/or applied to control pests that are present in or over, including near, surface waters. This general permit regulation is needed in order to comply with court ordered requirements for EPA and states to issue NPDES permits for both chemical pesticide applications that leave a residue or excess in water, and all biological pesticide applications that are made in or over, including near, waters of the United States.

On November 27, 2006, EPA issued a final regulation to codify its interpretation of the Clean Water Act as not requiring NPDES permits for application of pesticides to or over, including near, waters of the United States, if the applications are consistent with relevant Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) requirements. After the rule was published, petitions for review were filed in 11 Circuit Courts. On January 7, 2009, the Sixth Circuit Court of Appeals ruled in *National Cotton Council, et al. v. EPA* to vacate EPA's Pesticides Rule. On June 8, 2009, the Court granted the Department of Justice's request for a two-year stay of the decision, until April 9, 2011, to provide EPA and states time to develop and issue NPDES permits, and provide outreach to stakeholders on the implications of these actions.

The Sixth Circuit Court ruled that NPDES permits are required for both chemical pesticide applications that leave a residue or excess in water, and all biological pesticide applications that are made in or over, including near, waters of the United States. At the end of the two-year stay, NPDES permits will be required for discharges from pesticides applied directly to surface waters to control pests and/or applied to control pests that are present in or over, including near, surface waters.

The Court's decision will cover, at a minimum, the following pesticide uses:

- Mosquito and other aquatic nuisance insect control
- Aquatic weed and algae control
- Aquatic nuisance animal control
- Area wide pest control

Since the Court ruling, EPA has collected and analyzed data on pesticide applications, including labeling requirements, pesticide uses, best management practices employed to minimize the impact of pesticides on water quality, and existing state water quality standards for pesticides. EPA has begun drafting an NPDES Pesticides General Permit that will be issued by them for areas where EPA remains the NPDES permitting authority. EPA's draft general permit is proposed to cover the pesticide uses identified above, and the Agency will also request comments from the public on whether other types of pesticide applications have discharges that should also be included for coverage under the general permit.

The State Water Control Board will develop and issue a VPDES general permit to comply with the court's ruling.

The State Water Control Board will develop and issue a VPDES general permit for discharges from pesticides applied directly to surface waters to control pests, and/or applied to control pests that are present in or over, including near, surface waters. No specific proposal has been developed at this time. EPA intends to public notice a draft general permit for comment in the Spring of 2010. The permit is intended to require pesticide applicators to implement integrated pest management practices to minimize the discharge of pesticides to surface waters. The Board will use the EPA draft permit as a starting point for general permit development and discussions. Changes to the Board proposed general permit may come through the technical advisory committee process, the public comment process, and/or based upon the final permit that EPA ultimately develops and issues.

#### **Advisory panel:**

The Board is using a technical advisory committee to develop a proposal. Persons interested in assisting in the development of a proposal should notify the department contact person by the end of the comment period and provide their name, address, phone number, email address and the organization they represent (if any). Any persons who want to be on the advisory committee are encouraged to attend the public meeting mentioned above. The primary function of the advisory committee is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus. Multi-applications from a single company, organization, group or other entity count as one for purposes of making the decision specified in the preceding sentence. Notification of the composition of the advisory committee will be sent to all applicants.

**How to comment:** DEQ accepts written comments by email, fax and postal mail. All written comments must include the full name, address and telephone number of the person commenting and be received by DEQ no later than the last day of the comment period. {Both oral and written comments are accepted at the public meeting.} All testimony, exhibits and documents received are part of the public record.

**How a decision is made:** After comments have been considered, the board will decide whether to take action on a proposal. If the board decides to consider the regulation, there will be another public comment opportunity, including a public hearing. After these comments have been considered, the board will make the final decision.

**To review regulation documents:** The agency background document (including purpose, statutory authority, need, substance of planned regulatory changes, alternatives and the family impact statement) is available on the Town Hall web site at [www.townhall.virginia.gov](http://www.townhall.virginia.gov) and by contacting the DEQ representative named below. There are no regulation amendments available for public comment at this time.

#### **Contact for public comments, document requests and additional information:**

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